



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Mining Programs

# Final-Form Rulemaking: Noncoal Mining Clarifications and Corrections

Environmental Quality Board Meeting

April 11, 2023

Josh Shapiro, Governor

Richard Negrin, Acting Secretary

# Background

- Chapter 77 was finalized in 1990
  - Minor changes made in 1991, 1998 and 2008
  - Fee updates made in 2012 and 2019
- Since 1990, Department experience has highlighted several areas of Chapter 77 that need clarification
- This rulemaking corrects errors and provides clarification to existing regulations

# Summary of Proposed Rulemaking

- Added and revised definitions
- Typographical corrections and references updated
- Clarifications and updates on public notice and participation, small permit transfers, permit revisions, insurance requirements, limited liability companies
- Minor revisions to Certificate of Deposit limit, permit terms, civil penalties

# Summary of Proposed Rulemaking

- **Blasting (explosives)**

- Option for alternative air blast limit if justified and no structures will be affected

- **Exploration (Sections 77.109 & 77.113)**

- Drilling vs. extraction
- 20 ton threshold with option for 1,000 tons with justification
- Permit waiver for exploratory drilling only
- Exploration permit or waiver still has environmental requirements

# Proposed Rulemaking

- EQB adopted proposed rulemaking on November 17, 2020
- Published on March 20, 2021, for 45-day public comment period

# Public Comments

- Comments from 4 public commentators and Independent Regulatory Review Commission
- Final rulemaking includes language changes to three sections of Annex A and other minor formatting changes throughout
- Additional context and explanation provided in the Preamble and Regulatory Analysis Form on blasting, exploration, permit terms and revisions, civil penalties, and public participation provisions

# Public Comments

- **Alternative Blast level**

- Comment: Are there adverse impacts from allowing a higher (alternative) air blast threshold?
- Response: No. A higher threshold is only allowed when no structures will be affected by the higher air blast and justification is provided that the higher limit is necessary.

- **Civil Penalties**

- Comment: Should both The Clean Streams Law and Noncoal SMCRA be referenced in civil penalties regulations?
- Response: Yes, and the applicable regulations are revised accordingly.

# Public Comments

- **Exploration**

- Comment: How does the 200-ton minimum requirement specified in PennDOT's Bulletin 14 relate to the 1,000-ton upper threshold for exploration?
- Response: Bulletin 14 requires a 200-ton minimum sample to qualify aggregate for PennDOT use and several samples may be needed for qualification. Allowing up to 5 samples balances sufficient extraction of material while minimizing earth disturbance and burden on the operator.



# Public Comments

- **Water Quality Uses**

- Comment: Should existing uses for a stream be included in factors DEP considers when granting a waiver?
- Response: Yes. The regulation is revised to include both existing and designated uses of the stream.

# Public Comments

## Public Participation

- Comment: Concern that the proposed revisions related to the public comment period and the timing of the Department findings report reduces opportunities for public comment
- Response:
  - Public notice (by newspaper publication) that a permit application was submitted is not changed by the proposed revisions so the public comment period remains the same.
  - There is no change in the timing of the findings report release, which is provided as a record of the public hearing and to support the permitting decision, not to solicit further public comment.

# Changes from Proposed Rule

- Clarify that DEP considers the impact to both the existing uses and designated uses of streams when granting a noncoal exploration activity permit waiver
- Clarify when the summary report of informal conference/public hearing comments is available to the public
- Clarify when the Department assesses civil penalties under the Noncoal Surface Mining Conservation and Reclamation Act and The Clean Streams Law

# Advisory Committee Review

- Proposed regulation developed in consultation with Aggregate Advisory Board (AAB)
- AAB recommended that the Department proceed with the proposed rulemaking on May 6, 2020
- Revised draft final rulemaking presented to AAB on February 3, 2023
  - After making a few suggested revisions, AAB voted unanimously to recommend that the Department proceed with the final rulemaking.

# Recommendation

The Department recommends the Board adopt the Noncoal Mining Clarifications and Corrections final-form rulemaking.



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